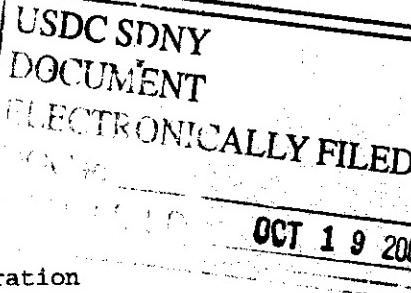


MANDATE

08-4567-cv
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Pauley

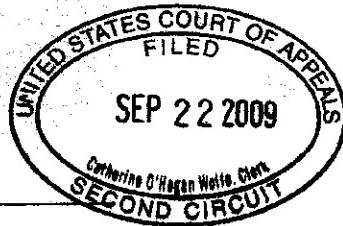
**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://WWW.CA2.USCOURTS.GOV/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 22nd day of September, two thousand and nine.

Present: ROGER J. MINER,
CHESTER J. STRAUB,
RICHARD C. WESLEY,
Circuit Judges.



COMPAGNIE NOGA D' IMPORTATION ET D' EXPORTATION S.A.,

Plaintiff-Appellant,

- v. -

(08-4567)

RUSSIAN FEDERATION,

Defendant-Appellee.

Appearing for Plaintiff-Appellant: MICHAEL C. WIMPFHEIMER,
Wimpfheimer &
Wimpfheimer, New York,

New York.

Appearing for Defendant-Appellee:

HOWARD S. ZELBO (BOAZ
S. MORAG AND VITALI S.
ROSENFELD, on the
brief), Cleary Gottlieb
Steen & Hamilton LLP,
New York, New York.

Appeal from the United States District Court for the
Southern District of New York (Pauley, J.).

1 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,**
2 **AND DECREED** that the judgment of the District Court be
3 **AFFIRMED.**

4 The facts and procedural history underlying this action
5 have been fully set forth by the District Court and this
6 Court in prior proceedings. *Compagnie Noga d'Importation et*
7 *d'Exportation S.A. v. Russian Federation*, 361 F.3d 676, 678-
8 83 (2d Cir. 2004); 2002 WL 31106345, at *1-5 (S.D.N.Y. Sept.
9 19, 2002). We assume familiarity by the parties as to the
10 facts, the procedural context, and the specification of
11 appellate issues.

12 In a Memorandum and Order dated August 15, 2008, the
13 District Court denied the motion to confirm and enforce
14 arbitration awards brought by Appellant Compagnie Noga

1 d' Importation et d' Exportation S.A. ("Noga"). The District
2 Court concluded that Noga had no interest in the awards and,
3 therefore, lacked standing to pursue its claim. Our review
4 of whether a plaintiff has constitutional standing is *de*
5 *novo*. *Cent. States Se. & Sw. Areas Health & Welfare Fund v.*
6 *Merck-Medco Managed Care, LLC*, 433 F.3d 181, 197 (2d Cir.
7 2005). We review a district court's findings of law, as
8 well as mixed questions of law and fact, *de novo*. *LoPresti*
9 *v. Terwilliger*, 126 F.3d 34, 39 (2d Cir. 1997). However, we
10 review a district court's findings of fact for clear error.
11 *Rent Stabilization Ass'n of N.Y. v. Dinkins*, 5 F.3d 591, 594
12 (2d Cir. 1993).

13 It is Appellant's burden to adequately establish that
14 it has standing under Article III, § 2, of the Constitution.
15 In order to satisfy this requirement, Appellant is required
16 to demonstrate a "concrete and particularized" injury in
17 fact, causation, and redressability. *Sprint Commc'n Co. v.*
18 *APCC Servs., Inc.*, 128 S. Ct. 2531, 2535 (2008). We affirm
19 the Order of the District Court because we find that
20 Appellant has failed to establish that it retains an
21 interest in the arbitral award.

1 A litigant waives an argument for purposes of appellate
2 review "by failing to present it below," and "an appellate
3 court will not consider an issue raised for the first time
4 on appeal." *In re Nortel Networks Corp. Sec. Litig.*, 539
5 F.3d 129, 132 (2d Cir. 2008) (per curiam) (internal
6 quotation marks omitted). "[M]erely typing out the [key]
7 words" or "merely incant[ing] the [key] phrase" "without
8 offering any argument or explanation of the point" to the
9 district court is "insufficient to preserve the issue for
10 appeal." *United States v. Harrell*, 268 F.3d 141, 146 (2d
11 Cir. 2001) (internal quotation marks omitted). Although we
12 have "discretion to consider arguments waived below because
13 our waiver doctrine is entirely prudential," we normally
14 decline to consider arguments waived below if those
15 arguments were available to the parties and the parties
16 proffer no reason for their failure to raise the issue.
17 *Nortel*, 539 F.3d at 133.

18 We have considered the remaining issues raised by
19 Appellant and find them to be either waived or without
20 merit.

21 Accordingly, the judgment of the District Court is

1 hereby **AFFIRMED**.

2

3 FOR THE COURT:
4 Catherine O'Hagan Wolfe, Clerk

5 By: Richard Alcantara
6 Richard Alcantara, Deputy Clerk
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A TRUE COPY
Catherine O'Hagan Wolfe, Clerk
by _____
DEPUTY CLERK